EXHIBIT B

1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------------------------------x
CMG HOLDINGS GROUP, INC. as
assignee of XA THE
EXPERIENTIAL AGENCY, INC.,
                    Plaintiff,

          -against-   Civil Action No.:
                                       15-CV-05815-JPO
JOSEPH WAGNER, HUDSON GRAY
LLC, DARREN ANDERECK, JESSIE
LOMMA, MICHAEL DAY, JEAN
WILSON, ESTELLE PIZZO ,STUDIO
AG, LLC, REMIGIO GUDIN, and
MIXED COMPANY INC.,
                    Defendants.
----------------------------------x
JOSEPH WAGNER, JEFFREY SMITH,
DARREN ANDERECK, and JESSIE
LOMMA,
          Third-Party Plaintiffs,
       -against-
GLENN LAKEN and ALEXIS LAKEN,
          Third-Party Defendants.
----------------------------------x

                    March 1, 2018
                    10:25 a.m.

     Deposition of PEDRO FARIA, a Non-Party Witness,
taken by Defendants and Third-Party Plaintiffs,
pursuant to Subpoena, held at the law offices of
Windels Marx Lane & Mittendorf, LLP, 156 West 56th
Street, New York, New York, before Judith Castore, a
Certified Livenote Reporter and Notary Public of the
State of New York.

Job No. 53856

2

1
2   A P P E A R A N C E S
3
4   ON BEHALF OF PLAINTIFF and THIRD-PARTY
5   DEFENDANTS:
6   EDWARDS POTTINGER, LLC
7   425 N. Andrews Avenue, Suite 2
8   Fort Lauderdale, Florida 33301
9   954-524-2820
10   BY: SETH LEHRMAN, ESQ.
11   seth@epllc.com
12
13   ON BEHALF OF DEFENDANTS and THIRD-PARTY
14   PLAINTIFFS:
15   WINDELS MARX LANE & MITTENDORF, LLP
16   156 West 56th Street
17   New York, New York 10019
18   212-237-1025
19   BY: SCOTT R. MATTHEWS, ESQ.
20   smatthews@windelsmarx.com
21
22
23
24
25

3

1
2   IT IS HEREBY STIPULATED AND AGREED, by and
3   among counsel for the respective parties hereto,
4   that the filing, sealing and certification of the
5   within deposition shall be and the same are hereby
6   waived.
7   IT IS FURTHER STIPULATED AND AGREED that all
8   objections, except to the form of the question,
9   shall be reserved to the time of trial;
10   IT IS FURTHER STIPULATED AND AGREED that the
11   within deposition may be signed before any Notary
12   Public with the same force and effect as if signed
13   and sworn to before the court.
14   * * * *
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4

1
2   P-E-D-R-O F-A-R-I-A,
3   Having been duly sworn by a Notary Public
4   within and for the State of New York,
5   stated an address as 431 Erico Avenue,
6   Apartment 2-R, Elizabeth, New Jersey 07202,
7   was examined and testified as follows:
8   EXAMINATION BY MR. MATTHEWS:
9   Q   Good morning, Mr. Faria. My
10   name is Scott Matthews, I'm an attorney
11   with the law firm of Windels Marx Lane
12   & Mittendorf. I represent the
13   defendants in a lawsuit pending in the
14   United States District Court Southern
15   District of New York.
16   Thank you for coming this
17   morning. I sent a subpoena to you to
18   compel your appearance at this
19   deposition.
20   Before we start I am just
21   going to go over some of what attorneys
22   like to refer to as the ground rules so
23   that you can understand that.
24   A   Okay.
25   Q   The first set of guidelines

5

1   FARIA
2   is, I'm going to ask questions. The
3   court reporter is transcribing all of
4   my questions, as well as your answers.
5   So I would ask that you wait for me to
6   finish before you answer, and I will,
7   in turn, wait for you to finish
8   answering the question before I ask
9   another question.
10   Is that acceptable?
11   A   Sure.
12   Q   If at any time I speak over
13   you, please stop me and tell me that
14   you haven't furnished and I'll
15   certainly accommodate you.
16   Is that okay?
17   A   Um-hum.
18   Q   Another guideline that we
19   have is that when you answer questions
20   the court reporter cannot take down any
21   nonverbal responses such as nodding of
22   the head or a hand gesture, so I'll ask
23   that you answer audibly.
24   Is that okay?
25   A   Sure.

2 (Pages 2 to 5)

18

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 1              FARIA
 2   the IT consulting business?
 3       A    Sixteen years.
 4       Q    Sixteen?
 5       A    Yes.
 6       Q    Did you originally work for
 7   another company or have you always --
 8   strike that.
 9       A    No, I've been --
10       Q    I'm sorry.  When I say strike
11   that it means ignore my question.
12       A    Okay.
13       Q    When did you first perform IT
14   consulting services?
15       A    Four years ago when I started
16   working for myself.
17       Q    And prior to that, what were
18   you doing?
19       A    I was a senior systems
20   administrator at an engineering
21   consulting firm.
22       Q    What does a senior systems
23   engineering administrator do?
24       A    A senior systems
25   administrator is in charge of the IT
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19

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 1              FARIA
 2   infrastructure of the company.
 3       Q    Okay.
 4            And for how long did you do
 5   that?
 6       A    Ten years.
 7       Q    Which company was that?
 8       A    BMK Group and Birdsall
 9   Services Group.
10       Q    Are those companies
11   affiliated with Radiant Resources?
12       A    No.
13       Q    Are they affiliated with XA?
14       A    No.
15       Q    Are they affiliated with CMG?
16       A    No.
17       Q    Are they affiliated with the
18   Lakens?
19       A    No.
20       Q    Have you ever been a party to
21   a lawsuit?
22       A    No.
23       Q    Have you ever been deposed
24   before?
25       A    No.
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20

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 1              FARIA
 2       Q    Do you know whether or not
 3   Radiant Resources entered into a
 4   contract with XA to perform IT
 5   services?
 6       A    I'm not sure what -- I'm not
 7   sure what happens on the Radiant side.
 8   I was contacted by one of the -- my
 9   contacts at Radiant that asked me to
10   engage with XA through them.
11       Q    Is that contact Gary?
12       A    Yes, sir.
13       Q    What is his last name?
14       A    Ciliberto.
15       Q    What did he ask you to do?
16       A    He asked me that -- he had
17   been contacted and he -- the XA in
18   New York needed to have a -- some work
19   done in their Hudson Street office.
20       Q    Do you know why he didn't --
21   strike that.
22            You performed those services
23   and then were paid by Radiant; is that
24   correct?
25       A    Yes, sir.
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21

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 1              FARIA
 2       Q    And Radiant charged XA for
 3   their --
 4       A    I don't know how they got
 5   paid.
 6       Q    So were you paid on an hourly
 7   basis or on a project basis?
 8       A    Time and materials.  Hourly,
 9   time and materials.
10       Q    Who did you initially work
11   with when you performed services for
12   XA?
13       A    My first visit to the XA
14   office, Jean Wilson was there, David
15   Tuma was there, and another associate
16   of David Tuma was there, and Gary for
17   the initial meeting.
18       Q    What was requested of you?
19       A    To set up a server, copier,
20   verify SonicWall, Firewall rules back
21   to the Chicago office.
22       Q    What do you mean by that, to
23   verify Firewall rules back to the
24   Chicago office?
25       A    There was a VPN in place from
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22

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1                FARIA
2    the New York office to the Chicago
3    office in order to maintain the windows
4    active directory domain and
5    communication between the New York
6    office servers and the Chicago office
7    servers.
8        Q    And what does VPN stand for?
9        A    Virtual private network.
10       Q    So this is how people in the
11   New York office could communicate with
12   people in the Chicago office and keep
13   the communications --
14       A    Exchange files.
15       Q    So that they could exchange
16   files?
17       A    Yes. I don't know what
18   other -- I don't know what other
19   services there were that they were
20   using, the VPN particularly.
21       Q    What other potential services
22   could it be used for?
23       A    Phones. Anything that can --
24   needed to travel through an IT based
25   network.
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23

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1                FARIA
2        Q    Who is David Tuma?
3        A    David Tuma, from what I
4    understand, is from Tuma & Associates.
5    There are e-mails in my -- in what I
6    sent to you. He was, from what I
7    understand, the main IT person for Jean
8    Wilson and XA Chicago.
9        Q    He was based out of Illinois,
10   correct?
11       A    From what I understand, yes.
12       Q    Did he appear knowledgeable
13   in IT matters?
14       A    Yes, sir.
15       Q    Did Jean Wilson appear
16   knowledgeable in IT matters?
17       A    Somewhat.
18       Q    How would you amplify that,
19   explain that?
20       A    I didn't have many
21   interactions with her. She seemed like
22   she knew some terms and some things,
23   but she deferred to David to, you know,
24   properly instruct me on the matters.
25   She kind of linked us up and then went
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24

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1                FARIA
2    on to do other things while David and I
3    worked together.
4        Q    Did you ever meet with Joseph
5    Wagner?
6        A    No.
7        Q    Did you ever speak with
8    Joseph Wagner?
9        A    Yes.
10       Q    Did you ever meet with Darren
11   Andereck?
12       A    Yes. I believe the first
13   time I went to the New York office that
14   he was there. I don't know -- it might
15   have been just in passing or I saw them
16   there. I didn't really have much
17   interaction in my first visit with
18   employees.
19       Q    Have you ever had any other
20   interaction was Darren Andereck?
21       A    Not that I am aware of.
22       Q    Have you had any interaction
23   with Jessie Lomma?
24       A    Again, these are employees
25   that were there. I went -- in the
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25

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1                FARIA
2    first visit I don't believe so, I
3    believe in the second visit she was
4    still there. And Jean had asked me to
5    do some stuff on Jessie's computer.
6        Q    Did you have any other
7    interaction with her afterwards?
8        A    No.
9        Q    I have the same question for
10   Mike Day, D-A-Y?
11       A    Everything -- it's the same
12   interaction with all employees.
13       Q    Of XA?
14       A    Yes.
15       Q    Have you ever met or spoken
16   with Estelle Pizzo?
17       A    That name is not familiar to
18   me.
19       Q    Okay.
20            Have you ever met or spoken
21   with Remigio, R-E-M-I-G-I-O, Gudin,
22   G-U-D-I-N. He goes by Remy?
23       A    Yes. I believe the first
24   time I was there he was in the furthest
25   office from the door. There was a dog
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7 (Pages 22 to 25)

30

FARIA

1
2 flow easier for the New York employees
3 and have a copy of files that they
4 needed.
5   Q   Is there a voicemail server?
6   A   I am not familiar with their
7 phone system.
8   Q   Did XA have backup systems in
9 place for their data?
10   A   The New York office had a
11 disk backup system that was
12 incorporated during the initial set-up.
13   Q   What is that?
14   A   It had a drive and a slot and
15 it had cartridges. And I installed
16 that setup and backup program.
17   Q   Prior to your going there, do
18 you know whether there was any backup
19 system in place?
20   A   I am not aware of any
21 information prior to me.
22   Q   When you got there you didn't
23 observe any backup?
24   A   The server was new to that
25 location in New York, the one that I

31

FARIA

1
2 set up. There was nothing there that I
3 am that aware of prior to that.
4   Q   Who managed XAs network
5 configuration at that time?
6   A   I'm not entirely sure who had
7 that responsibility. It was never
8 revealed to me.
9   Q   After you set-up the server,
10 do you know who had that
11 responsibility?
12   A   I don't know who was
13 maintaining them on the day-to-day
14 basis. I don't know if XA had an IT
15 staff or if they were had contracting
16 David Tuma to perform those tasks. I
17 am not privy to that information.
18   Q   Did you ever deal with an IT
19 staff other than David Tuma?
20   A   I did not deal with any other
21 people in terms of IT except Jean
22 Wilson and David Tuma.
23   Q   Are you aware that in some
24 time in 2014, XA migrated its e-mail to
25 the cloud?

32

FARIA

1
2   A   Afterwards during my first
3 interaction, I believe, with the Lakens
4 I became aware of that.
5   Q   What does that mean when
6 someone -- when a company migrates its
7 e-mail to the cloud?
8   A   It means that they had
9 on-premises servers and that for
10 whatever reason it was no longer
11 feasible to maintain that service, so
12 for typically better availability they
13 migrate their service to a cloud
14 provider such as Office 365 or Gmail.
15   Q   What were they using?
16   A   WindStream.
17   Q   Which is similar to Office
18 365 or Gmail?
19   A   Yes. It's an exchange based
20 product so more in comparison to Office
21 365.
22   Q   When you have e-mail stored
23 on WindStream, are you able to delete
24 it?
25   A   As in that you need -- no,

33

FARIA

1
2 you need to -- more detail.
3   Q   Okay.
4   Explain to me how one would
5 delete e-mail that's stored in the
6 cloud?
7   MR. LEHRMAN: Form. Vague.
8   A   You need more detail.
9   Q   Is there a process by which
10 one can delete e-mail stored in the
11 cloud on Windstream?
12   A   Any -- so a user has access
13 to whatever accounts he has access to.
14 That user can delete e-mail through
15 that access. An administrator has
16 almost root access to the server, that
17 administrator can delete mailboxes.
18   Q   When you delete a mailbox,
19 what happens?
20   A   It's deleted.
21   Q   It's deleted completely?
22   A   Yes.
23   Q   Forever?
24   A   Depending -- again, so
25 because it's an on cloud service even

9 (Pages 30 to 33)

34

FARIA

1 an administrator of that service never
2 has full control of the servers.
3 You're getting a tenant-based control.
4 So when an e-mail is deleted -- when a
5 mailbox is deleted, depending on
6 what -- the backup that was setup and
7 configured is the recovery points that
8 are available. So if the e-mail box is
9 deleted and no recovery points are
10 available; then, yes, it is deleted.
11   **Q   And if that e-mail had**
12 **previously been backed up, then it's**
13 **available to be recovered?**
14   A   From the point of time of the
15 recovery, yes. If -- from the point of
16 time of the recovery, yes, it can be
17 recovered. If the user deleted e-mails
18 prior to that point in time, those
19 e-mails that were deleted prior are not
20 recoverable -- from that point in time
21 of recovery.
22   **Q   You said from the point in**
23 **time of recovery. I'm not as well**
24 **versed at all as you are, but it would**

35

FARIA

1 **strike me -- did you mean to say from**
2 **the point of time of the back up?**
3   A   Yes.
4   **Q   Okay. Thank you.**
5   **Someone who doesn't have**
6 **administrator privileges cannot delete**
7 **e-mail that's in the cloud; is that**
8 **correct?**
9   A   No.
10   **Q   It's wrong?**
11   A   Yes. They cannot delete
12 mailboxes. They can delete e-mail from
13 whichever account they have access to.
14 So you as Scott can go into your
15 mailbox -- into your Outlook or
16 whatever client you use and delete and
17 manage e-mails there. Depending upon
18 what the retention policies that your
19 company has is a different story. So
20 you can delete -- you have access --
21 this sheet is your mailbox, you have
22 access to anything inside your mailbox.
23 Because you're not an administrator,
24 you cannot just delete the whole

36

FARIA

1 mailbox.
2   **Q   I see.**
3   **And so do you know whether XA**
4 **had retention policies that would**
5 **prevent individual users who do not**
6 **have administrator privileges to delete**
7 **e-mail?**
8   A   From my understanding of
9 Windstream and how it was configured,
10 users had full access to their
11 mailboxes as it is instructed, and an
12 administrator has full access to the
13 system. There were backups that were
14 set-up. But that's -- so there's
15 administrator access and there's user
16 access. So I don't know who initially
17 had administrator access. You can
18 assume that all employees had -- that
19 had a mailbox had user access.
20   **Q   But not all employees had**
21 **administrator access?**
22   A   Correct.
23   **Q   Who had administrator access?**
24   A   From what I recall, David

37

FARIA

1 Tuma had administrator access and Jean
2 Wilson had administrator access and
3 there was an ambiguous administrator
4 account.
5   **Q   What does that mean?**
6   A   It's just called
7 administrator.
8   **Q   So you don't know who?**
9   A   It's basically the God of the
10 system, right? So whoever -- there's
11 no real accountability in terms of
12 who -- which individual logged in as
13 that person -- as that user.
14   **Q   Did you conduct an**
15 **investigation to determine who had that**
16 **user privilege?**
17   A   So we're fast forwarding to
18 later on in 2014 when the Lakens
19 contacted me and said, why are you not
20 responding to our requests for
21 assistance. And I said I have not
22 received any requests until right now.
23 And at that point I assisted them in --
24 to regaining administrator access to

10 (Pages 34 to 37)

38

FARIA

1
2 their Windstream service. And then in
3 there you -- in there I was able to run
4 some portion of an investigation that
5 somebody logged in as an administrator
6 created a Ron Burkhardt account, gave
7 Ron Burkhardt administrative access,
8 then logged off, logged back in under
9 the Ron Burkhardt account and preceded
10 to delete mailboxes from the system.
11 The IP from which the administrator
12 account was logged in from created the
13 Ron Burkhardt account, logged out,
14 logged back in as Ron Burkhardt and
15 preceded to delete the mailboxes from
16 the server was the same originating IP,
17 a T-Mobile based IP 3G from the
18 Illinois area.
19   MR. MATTHEWS: I would like
20   to mark this as Exhibit 2, please.
21   (Document, Bates-stamped
22   XA0629524 through 532; 534 through
23   539, was marked Defendant's
24   Exhibit 2, for identification, as
25   of this date.)

39

FARIA

1
2   Q   Sir, I would like you to take
3 a look at what's been marked as
4 Defendant's Exhibit 2, which I'll
5 represent -- state for the record is a
6 series of documents produced by XA
7 bearing the Bates Number legend at the
8 bottom XA0629524 through 532, and then
9 534 through 539. And this has been
10 designated as confidential pursuant to
11 a court order. Let the record reflect
12 that.
13   Have you seen this before?
14   A   No, sir.
15   Q   Did you -- you see the
16 handwritten notes on the first page?
17   A   Okay.
18   Q   Is that your handwriting?
19   A   No, sir.
20   Q   Is this a document that you
21 printed out?
22   A   No, sir.
23   Q   Do you know what this
24 represents?
25   A   Looks like logs of some sort.

40

FARIA

1
2   Q   If you look at the first page
3 it says 9/25/2014. Log in
4 Jean@XTAGENCY.com.
5   Do you see that?
6   A   Yes.
7   Q   Is that, to your knowledge,
8 Jean Wilson's log in?
9   A   Yes, sir.
10   Q   And how do you know that?
11   A   Because I have had e-mail
12 interactions with Jean before under
13 Radiant.
14   Q   That was her e-mail address?
15   A   Yes, sir.
16   Q   And then if you go down you
17 see on September 17, 2014, it says
18 Windstream admin?
19   A   Yes, sir.
20   Q   Is that the administrator
21 account that you were referring to?
22   A   Yes, sir.
23   Q   How do you know that?
24   A   It could be the administrator
25 account or a Windstream maintenance

41

FARIA

1
2 person. I am not sure if it's one
3 other the other.
4   Q   Look at the next page,
5 please. At the top it's September 16,
6 2014. And there's a -- looks like a
7 log in of
8 Aowens@CreativeITconsulting.com.
9   Do you see that?
10   A   Yes, sir.
11   Q   Do you know what
12 CreativeconsultingIT --
13 CreativeITconsulting.com is?
14   A   That, from what I understand,
15 is David Tuma's company.
16   Q   Do you know someone that has
17 the first initial A and the last name
18 Owens?
19   A   I believe that's the
20 associate I met in New York with
21 Mr. David Tuma.
22   Q   Is that a male or female?
23   A   Male.
24   Q   Do you know what his name is?
25   A   I don't recall.

46

```
 1              FARIA
 2    contact your IT administrator, your IT
 3    administrator goes to your active
 4    directory user account to reset your
 5    password.  And when he tells you what
 6    this password and you are able to log
 7    in again, that's that service that ties
 8    around active directory.
 9        Q   And is any of the information
10    that's in the active directory stored
11    in the cloud?
12        A   Yes.  That's where he deleted
13    this from.  So there's an on-premise
14    active directory server, and there's
15    some sort of sink agent to the cloud
16    service.  So either by deleting the
17    account in the cloud directory -- so by
18    deleting the account in the cloud
19    directory, the sink service would then
20    delete the account from the on-premises
21    directory.
22        Q   Okay.
23            As you go through these
24    numbered pages there are a number of
25    similar entries, correct?
```

47

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 1              FARIA
 2        A   Yes.
 3        Q   For example, if you look at
 4    page -- this is the bottom right,
 5    XA0629527.
 6            Do you see that page?
 7        A   Um-hum.
 8        Q   If you look at the top?
 9        A   Um-hum.
10        Q   Mike at XPHC.com.  And I'll
11    represent that I believe that that is
12    Mike Day?
13        A   Okay.
14        Q   Do you know whether or not
15    Mr. Day was still employed by XA on
16    September 10, 2014?
17        A   I do not know.
18        Q   Do you know whether -- at the
19    bottom here Jeff@EXPagency.com, do you
20    know whether Mr. Jeff Smith was still
21    employed by XA on that date?
22        A   I don't have any information
23    for employees whether or not they
24    worked or when their last day workday
25    at XA Agency is.
```

48

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 1              FARIA
 2        Q   Can you go to Page -- I think
 3    it's two pages down, XA0629529.
 4            Can you tell me what the top
 5    entry refers to?
 6        A   The top entry seems to refer
 7    that the user, Jean@EXPagency.com
 8    logged in from -- at 9:15 in the
 9    morning of September 9th, 2014, and
10    deleted a weekly back up of Remigio
11    Gudin's mailbox.
12        Q   How do you know that's a
13    weekly backup?
14        A   It says weekly user and a
15    date .PST.
16        Q   How do you know that's a
17    backup as opposed to a file that's
18    simply entitled Weekly Remigio Gudin
19    8/30/14?
20        A   It is a file in the
21    Windstream servers that is a backup of
22    that mailbox on August 30th, 2014, as a
23    part of their weekly backup process.
24    It is a -- it is a industry standard
25    naming convention.
```

49

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 1              FARIA
 2        Q   So I may have files that
 3    refer to what I do on a particular week
 4    that I date weekly Scott Matthew's
 5    files; that's something different,
 6    correct?
 7        A   Yes.  This is a PST file.  A
 8    PST file is an offline version of an
 9    Outlook or exchange mailbox.
10        Q   So does that suggest to you
11    that XA had a policy at this time to
12    backup user files on a weekly basis?
13            MR. LEHRMAN:  Form.
14        A   User mailboxes on a weekly
15    basis, yes.
16        Q   Is that consistent with your
17    understanding of XA's policy?
18        A   I do not know what XA's
19    policies are.  This is a reflection of
20    whatever -- however the Windstream
21    service was originally configured.
22        Q   Can you go to Page 0629536.
23            This page has a record of
24    transactions occurring on September 9,
25    2014, correct?
```

13 (Pages 46 to 49)

50

```
 1              FARIA
 2      A    September 10.
 3      Q    I apologize.  September 10,
 4   2014.
 5      A    Okay.
 6      Q    What is meant by the notation
 7   at the top under the source effected
 8   column where it says --
 9      A    One second.
10      Q    Yes.
11      A    There's a discrepancy in the
12   dates.
13      Q    Where is the discrepancy?
14      A    Well, you have -- Page 28 has
15   September 10th, Page 29 has
16   September 9th.  Page 30 has
17   September 9th.  Page 31 has
18   September 9th.  Page 32 has
19   September 9th.  And then Page 34, which
20   is two pages after 32, goes back to
21   September 10th  so there's a
22   discrepancy in the pages and in the
23   timestamps of the -- it just seems
24   weird why it's out of order.
25           What's your question about
```

51

```
 1              FARIA
 2   Page 36?
 3      Q    On Page 36 under the column
 4   source effected, it says hosting dot
 5   public dot data dot contacts dot
 6   contactIDinfo.
 7           Do you see that?
 8      A    Um-hum.
 9      Q    What does what refer to?
10      A    Again, you need to go further
11   down to see where it starts.  So you
12   are looking at 2:21 p.m. and 58
13   seconds.  When you go further down you
14   see that at 2:21 and 4 seconds
15   administrator logged in from that IP
16   address.  Okay.  That's weird.
17   Administrators were logging in from
18   different IP addresses.  And Jean
19   Wilson's account was logging in from
20   similar IP addresses.  Okay.  Very
21   confusing.  Nonetheless there was a
22   process of many log ins and
23   modifications.  So let's go back to --
24   this looks about right.
25           So if we go back to Page 37.
```

52

```
 1              FARIA
 2   Jean Wilson logs in at 1:29.  Jean
 3   Wilson logs in again at 1:32, Jean
 4   Wilson from one IP address, 74 dot 93
 5   dot 94 dot 169.  That is one location
 6   where she's logging in from those two
 7   times.
 8      Q    That's when -- when the
 9   account user Jean@EXPagency.com is
10   logging in, correct?
11      A    Yes.  Correct.
12           So then at 2:11.19 she logged
13   in from 172 dot 56 dot 13 dot 153.
14      Q    Well, Mr. Faria, I just want
15   to ask you a question.
16      A    It's --
17      Q    Well, just give me one
18   second.
19           You don't know, as you sit
20   here today, whether or not Jean Wilson
21   actually logged in.  You know that a
22   user with the user account name
23   Jean@EXPagency.com logged in, correct?
24      A    Yes.  The user account was
25   logged in, I don't know who's sitting
```

53

```
 1              FARIA
 2   behind the keyboard.
 3      Q    Thank you.
 4      A    So at 2:11 they logged in
 5   from the 172 IP address.  Two minutes
 6   later the same account logs in from the
 7   64 IP address, and at that time they
 8   create an account called admin.  Then
 9   administrator logs in roughly 50
10   seconds later from the same IP address
11   and makes changes on that contact.
12   Administrator makes more changes to its
13   own account.  Then at 2:14.24
14   administrator logs in from the same IP
15   address as the first Jean Wilson user
16   account was logged in from.  Then
17   administrator logs in from the same IP
18   address that the second Jean Wilson
19   user account was logged in from.  That
20   time at 2:21 and 4 seconds a Ron B
21   account is created.  Then 53 seconds
22   later that Ron B account is logged in,
23   it's given access to the administrator
24   aspect of things, then we go -- that
25   the Ron B account at 2:22 p.m. is then
```

14 (Pages 50 to 53)

54

```
1                FARIA
2    logged in from the IP address of the
3    first Jean Wilson user account.  At
4    that point in time the Ron B account
5    that was logged in from the second IP
6    address location of the -- that Jean
7    Wilson and the administrator account
8    was created or administrator from
9    proceeds to delete settings and then
10   mailboxes and then users from the
11   Windstream server.
12        Q   Is that what you were
13   referring to earlier this morning?
14        A   Yes.
15        Q   When we were talking about a
16   user creating a Ron B account and then
17   deleting --
18        A   Yes.
19        Q   -- profiles?
20        A   Yes.  The 172 IP address is
21   a T-Mobile public IP address.  I don't
22   recall what the 64 IP address is.
23        Q   What does T-Mobile public IT
24   address mean?
25        A   Meaning that the person has a
```

55

```
1                FARIA
2    T-Mobile cellular service or hot spot
3    and they're using it to access the
4    internet.  And that IP address is based
5    out of Chicago -- Illinois.  I don't
6    know if Chicago was the actual
7    geographic area.
8        Q   That could be any person
9    using their hot spot?
10       A   That could be any person with
11   a device with T-Mobile service.
12       Q   Do you know when Ron
13   Burkhardt was terminated by XA?
14       A   I do not know when Ron
15   Burkardt was terminated.  My second
16   interaction with XA in the Hudson
17   Street office, Ron Burkhardt and
18   another person were there under -- Jean
19   Wilson mentioned that -- Jean Wilson
20   was there.  So I met Jean Wilson and
21   she said that the New York office and
22   the Chicago office are splitting up.
23   Ron is going to be spearheading the
24   New York office.  There was another
25   lady there that was his administrative
```

56

```
1                FARIA
2    assistant.  It seemed the computers
3    were there but there was a lot less
4    people in the office, and I believe
5    Jessie was there that day.
6        Q   Do you know why Ron Burkhardt
7    was terminated?
8        A   I have no information as to
9    why or when he was terminated from XA.
10       Q   Let's talk about when you
11   went to the New York office on your
12   second time.
13       A   Okay.
14       Q   When approximately was that?
15       A   We would have to go back to
16   the e-mails that I sent you today to
17   know exactly what the time and date was
18   for that.  I don't recall.
19       Q   But you said that there were
20   computers in the office space, correct?
21       A   Yeah.  There -- it looked
22   like they were -- yeah, there were
23   still computers -- empty desks and
24   computers at those desks.
25       Q   And there were chairs there,
```

57

```
1                FARIA
2    correct?
3        A   Yes.
4        Q   And there was office
5    furniture there, correct?
6        A   Yes, there was office
7    furniture.
8        Q   Just fewer employees?
9        A   By the look -- by my initial
10   assessment, yeah, it was just emptier
11   than -- a lot less hustle and bustle
12   than the original time I was there.
13       Q   It wasn't a crowded busy
14   office space?
15       A   Not anymore.
16       Q   But there were desktop
17   computers?
18       A   Yes.
19       Q   The Macs were there?
20       A   Some were there.  I don't
21   know.  I did not take an original
22   inventory of my first trip to the XA
23   office, so I don't know whether or not
24   everything that was there when I
25   originally went there was there when I
```

15 (Pages 54 to 57)

58

1   FARIA
2   went there for the second time.
3   Q   Did it appear to you at the
4   time that things were missing?
5   A   Not to me.
6   Q   Is it a common practice to
7   delete user profiles when people are no
8   longer employed?
9   A   Not without first taking a
10 backup of them, from my own personal
11 experience.
12   Q   Do you know whether or not
13 backups were created with XA?
14   A   I don't know if --
15   MR. LEHRMAN: Form. Vague.
16   Q   Do you know whether or not
17 backups were created prior to e-mail
18 profiles being deleted?
19   A   You are talking about two
20 different things. Are we talking about
21 desktops or e-mails or desk top
22 profiles?
23   Q   Okay.
24   Have you heard of -- heard
25 that -- strike that.

59

1   FARIA
2   Did Jean Wilson ever ask you
3   to wipe all the computers of
4   information at XA's New York office?
5   A   Yes.
6   Q   What did she say to you?
7   A   She asked me -- that was the
8   second interaction I had with XA at
9   Hudson Street. And I basically went in
10 and she presented the premise that Ron
11 Burkhardt was going to be in charge of
12 the New York office, as I stated
13 previously. And that XA New York and
14 XA Chicago were going their separate
15 ways. And under that agreement that
16 everything that was there would
17 physically stay. She asked me to go
18 into each and every desktop machine in
19 the office and clear out any user
20 accounts except for XA guest account.
21   Q   What's an XA guest account?
22   A   It's just a generic active
23 directory account that could be used to
24 log in. You know, companies typically
25 have user one or, you know, the name of

60

1   FARIA
2   your firm dot one or Windows marks.
3   There's a guest -- just an account that
4   exists -- an active directory that's
5   typically if anybody that is not from
6   within the enterprise or if somebody
7   just needs to have quick access to
8   something, like a publicly known user
9   name and password for access to the
10 infrastructure.
11   Q   And what was your response to
12 her when she asked you this?
13   A   I said okay. Is there
14 anything that we should watch out for
15 during this deletion? And she said,
16 let me know when you have any questions
17 about any files that are being deleted
18 and I will answer you as to what the --
19 you know, how to proceed.
20   Q   Did you delete files?
21   A   I was instructed that was the
22 premise of my being there, to clean up
23 and delete all the user profiles from
24 the desktop machines that were not XA
25 guest.

61

1   FARIA
2   Q   Did you do that?
3   A   I did do that. And
4   through -- as I was going through some
5   of the profiles I noticed that there --
6   some had either large profiles or files
7   that, from experience, by the naming
8   structure and/or their size seemed
9   important to keep. And at any time
10 that I came to this juncture and I
11 asked Jean, what about this file or
12 what about this folder, she proceeded
13 to instruct me to continue on with the
14 deletion of those files and folders
15 from the user profiles.
16   MR. MATTHEWS: Would you mark
17 this as Exhibit 3.
18   (E-mail string between
19 Alexis@EXPagency.com to
20 PFaria@FarPinsolutions.com, was
21 marked Defendant's Exhibit 3, for
22 identification, as of this date.)
23   Q   This is an e-mail that you
24 provided this morning at approximately
25 1:55 a.m.

16 (Pages 58 to 61)

62

```
 1              FARIA
 2      A   Um-hum.
 3      Q   That is two e-mails,
 4  actually.  Originally it's from
 5  Alexis@EXPagency.com to
 6  PFaria@FarPinsolutions.com.
 7          Is that your e-mail address?
 8      A   That is my e-mail address.
 9      Q   Do you know what the e-mail
10  address of Alexis@EXPagency.com is?
11      A   Yes.
12      Q   Who is that?
13      A   Alexis Laken.
14      Q   Okay.
15          She asked Pedro on what day
16  did you come to the office and wipe all
17  of the computers of all information at
18  Jean's insistence?  I just need it for
19  my timeline.  Thank you, Alexis Laken.
20          Do you see that?
21      A   Yes, sir.
22      Q   Did you respond June 11,
23  2014?
24      A   That's what it looks like.
25      Q   Does that refresh your
```

63

```
 1              FARIA
 2  recollection of when you came to the
 3  office a second time?
 4      A   I would -- like I mentioned
 5  before, I would have to go and review
 6  my e-mails.  And if that's the date
 7  that I responded to her that I went to
 8  the office, then that's the date I went
 9  to -- my second visit to Hudson Street
10  in New York to clean up the computers
11  was on June 11, 2014.
12          MR. MATTHEWS:  Mark this.
13          (E-mail string between
14      Gary@Radiantresources.com to
15      PFaria@FarPinsolutions.com, was
16      marked Defendant's Exhibit 4, for
17      identification, as of this date.)
18      Q   Sir, just take a look at this
19  document that's been marked Defendant's
20  Exhibit 4.
21          And this is also amongst the
22  materials that you produced to us.
23      A   Okay.
24      Q   It's a five-page e-mail
25  string.
```

64

```
 1              FARIA
 2      A   Okay.
 3      Q   Between
 4  Gary@Radiantresources.com.
 5          Do you know who that is?
 6      A   Yes, sir.
 7      Q   Who is that?
 8      A   That's Gary Ciliberto, my
 9  contact at Radiant.
10      Q   And it's between he and
11  yourself; is that correct?
12      A   The last of the thread, yes.
13      Q   Right.
14          The beginning of the thread
15  is between Jean Wilson, which is
16  Jean@EXPagency.com, correct?
17      A   Yes.
18      Q   And Gary?
19      A   Yes, that's what it looks
20  like.
21      Q   Do you see on Page 2 what
22  Jean asks him or states as the purpose
23  of this IT visit?
24      A   Yes.
25      Q   Okay.
```

65

```
 1              FARIA
 2          I'm just going to read this
 3  into the record.  It says, Gary, thanks
 4  so much, 11:00 a.m. on Wednesday would
 5  be great.  We will be going to each
 6  desktop and removing existing profiles
 7  and creating new ones for new team
 8  members and then making sure that they
 9  are able to print, et cetera.  There
10  are about ten Dells and four Macs.  Not
11  all will need a new profile, but all
12  need to have existing profile removed.
13  And I think there may be one new Mac in
14  the box to set-up.  We will set a
15  priority list for Wednesday, and then
16  if there's a follow-up visit needed we
17  can schedule accordingly.  I want to
18  take advantage of me being on-site
19  since it is only for the day.  We would
20  also like to make sure that all
21  machines can be logged into using the
22  XA guest credentials and can print.
23  And then the e-mail goes on with
24  respect to that.
25          Is that what she told you to
```

70

```
 1            FARIA
 2   are user accounts.
 3       Q   Can you give me an example of
 4   a service account?
 5       A   Back-up exec is one.
 6       Q   Where is that?
 7       A   B.
 8       Q   On the third page?
 9       A   On the section page of the
10   e-mail on the first page of the Excel,
11   back-up exec.
12       Q   That's a service account?
13       A   Yeah.  Back-up exec is a
14   backup utility from Symantec.  And
15   that -- I assume that they created that
16   had account because they wanted to
17   receive e-mail alerts of backup jobs as
18   they occurred.  So that's an example of
19   a service account.  You have others;
20   feedback, inquiries, iPad.  Anything
21   that doesn't have a typical first name
22   last name could be considered a service
23   account and/or a distribution list like
24   Neighbors, VIP XAPR, XARSVP.  Those are
25   all service accounts.
```

71

```
 1            FARIA
 2       Q   And in this time in
 3   December 2014, Jean Wilson, Jeff Smith,
 4   Jessie Lomma, Darren Andereck; they
 5   were all no longer affiliated with XA,
 6   correct?
 7       A   Yes.  And these accounts --
 8   and you see these mailboxes here
 9   because they were recovered --
10   requested to be recovered by Glenn
11   Laken from Windstream from Windstream's
12   back-ups.
13       Q   Did you recover them?
14       A   I did not recover them.
15   Windstream recovered them.
16       Q   So by December 4, 2014, they
17   were recovered?
18       A   They were recovered from a
19   point in time.
20       Q   Right.
21       A   Right.
22       Q   Was any further recovery ever
23   done with respect to those accounts?
24       A   No, not from Windstream.
25       Q   Did you ever do any recovery
```

72

```
 1            FARIA
 2   with respect to those e-mail accounts?
 3       A   On Windstream servers, no.
 4       Q   What about on other -- in any
 5   other fashion?
 6       A   There were -- at some point
 7   the Lakens regained access to all of
 8   the hardware in the Chicago and in the
 9   New York office.
10       Q   What do you mean by "regained
11   access"?
12       A   They physically had access to
13   whatever was left behind in those
14   spaces.
15       Q   Did they -- I think you said
16   regained?
17       A   Or gained access or gained
18   possession.  So XA changed the guard
19   three times, right.  So there was the
20   time that I went there the first time
21   under the direction of Jean Wilson.
22   There was the second time that Jean
23   Wilson said that Ron Burkhardt was now
24   the person in charge of XA New York.
25   And then the third time, which was when
```

73

```
 1            FARIA
 2   they contacted me to assist them and
 3   when I became their IT person.
 4       Q   Under the Lakens Management?
 5       A   Under the Lakens Management.
 6   So they had access to these spaces and
 7   access to whatever hardware was left
 8   behind.  And they requested my input
 9   and expertise on what should they do
10   with what was left behind.  I said the
11   desktops aren't really necessary, what
12   is most critically important is to keep
13   all the hard drives from any and all
14   equipment.  So they kept the hard
15   drives.  They sent them to me where we,
16   in different points in time, did
17   different methods of recovery.  So from
18   the profiles and things that I had
19   originally deleted.
20       Q   Let's back up a little bit.
21           You said that they recovered
22   these e-mails from Windstream.  I'm
23   going to show you a document.
24           MR. MATTHEWS:  Please mark it
25   as Exhibit 6.
```

DAVID FELDMAN WORLDWIDE, INC. - A VERITEXT COMPANY
330 Old Country Road - Ste. 300, Mineola, NY 11501 1.800.727.4396

74

```
 1              FARIA
 2       (E-mail from
 3       PFaria@FarPinsolutions.com dated
 4       9/30/14 to Alexis Laken, was
 5       marked Defendant's Exhibit 6, for
 6       identification, as of this date.)
 7       Q   This is an e-mail that you
 8   provided, sir.
 9       A   Um-hum.
10       Q   That is an e-mail from you
11   apparently to Alexis Laken; is that
12   correct?
13       A   Yes.
14       Q   Dated September 30, 2014.
15       Do you see that?
16       A   Yes.
17       Q   Entitled EXP agency e-mail
18   recovery access.
19       Do you see that?
20       A   Yes, sir.
21       Q   And it says, Hi, Alexis, all
22   five e-mail accounts have been
23   recovered.  Jessie, Jeff, Darren,
24   Natalia, Mike.
25       Do you see that?
```

75

```
 1              FARIA
 2       A   Um-hum.
 3       Q   Does that indicate that by
 4   September 30th, 2014, all five of those
 5   e-mail accounts had been recovered?
 6       A   Yes.  Recovered from the
 7   point in time recovery as we discussed
 8   from the attachment from the
 9   December 4th e-mail.
10       Q   Right.
11       And this was done by
12   September 30th?
13       A   Right.  Because -- and this
14   was done by Windstream at the request
15   of Glenn Laken.
16       Q   And the record that I showed
17   you earlier seemed to suggest that
18   these e-mail accounts were deleted on
19   or about September 10th, correct?
20       A   That's correct.
21       Q   So there's about a 20 day
22   period when they were deleted?
23       A   I don't recall the date of
24   which the e-mail accounts were
25   recovered from.  This is the time in
```

76

```
 1              FARIA
 2   which they had been all recovered by.
 3       Q   But you don't know how far
 4   back they -- they were backed up?
 5       A   The backups -- so
 6   Windstream -- because the backups from
 7   the tenant portal had already all been
 8   removed as stated in the logs of
 9   Exhibit 2, when the Lakens regained
10   access -- with my assistance we were
11   able to regain access into the
12   administrator tenant profile of
13   Windstream.  So because all of those
14   recovered points had been removed from
15   that tenant access, we had to contact
16   and elevate a ticket with Windstream
17   for Windstream technical support as to
18   information as to if they had backups
19   and if things could be recovered from
20   those backups.  And the manner in which
21   that those -- it worked was you had to
22   pay per instance per point in time
23   recovery that you wanted to go back to.
24   The Lakens agreed to only one point in
25   time recovery to go back to.  I don't
```

77

```
 1              FARIA
 2   recall the date of that point in time
 3   recovery that was agreed upon.  And
 4   that recovery of that point in time to
 5   be determined had occurred by
 6   September 30th, 2014.
 7       Q   All right.
 8       And when you looked at
 9   Exhibit 2 we only saw that one week of
10   backups had been deleted, according to
11   Exhibit 2, correct?
12       A   According to Exhibit 2.
13       Q   Okay.
14       A   Well, not necessarily -- hold
15   on.  No, more than that.  Because all
16   the -- many recovery points dated
17   August 30th from Page 29, Page 30, Page
18   31, then Page 31 talks about
19   September 6th.
20       Q   Where does it say that?
21       A   Page 31?
22       Q   Yes.
23       A   The weekly files have a
24   September 6th date.
25       Q   Okay.
```

90

FARIA

1
2   A   I went back to the New York
3   office because John Wilken, Sarah
4   Alexis, they were the ones currently
5   running and operating XA. And to help
6   and assist them with their Macs and
7   e-mail access; yes, I did go back. I
8   don't recall the date exactly, I would
9   have to go back to my log.
10   Q   Was there office furniture in
11 the office then?
12   A   Yeah. Everything looked as
13 normal as it had the last time. Again,
14 I took no inventory of both of my
15 initial visits to the XA Hudson Street
16 office, so upon my return back things
17 looked like everything was. But I do
18 not know for sure since inventory was
19 not taken and accounted for.
20   Q   Thank you.
21   Do you know when XA first
22 filed this lawsuit?
23   A   I don't know dates of
24 lawsuits filed.
25   Q   Do you know whether it was

91

FARIA

1
2   filed before October 1, 2014?
3   A   I -- I don't know dates of
4   when lawsuits were filed.
5   Q   When did Glenn Laken first
6   tell you that there was a lawsuit
7   involving XA and some of its former
8   employees?
9   A   I don't recall the date of
10 that conversation.
11   Q   Do you know whether it was
12 before this e-mail?
13   A   At this point, from memory,
14 they knew that something fishy had
15 happened and they were looking to get
16 to the bottom of it. I don't recall
17 them telling me when the date of a
18 lawsuit was filed.
19   Q   Have you ever spoken with
20 Richard Roth regarding this matter?
21   A   Richard Roth? Who is Richard
22 Roth?
23   Q   I said, have you ever spoken
24 with him?
25   A   That name is not familiar to

92

FARIA

1
2   me.
3   Q   You have not recollection of
4   ever speaking with him?
5   A   That's correct.
6   Q   Have you ever spoken or
7   communicated with Lawrence Steckman
8   regarding this lawsuit?
9   A   Yes, that is the lawyer --
10 the EVW lawyers, I believe, under the
11 Ron Burkhardt litigation process.
12 Prior to Mr. Seth they were the Lakens
13 counsel.
14   Q   Have you ever spoken with
15 Robert Rickner?
16   A   Yes.
17   Q   He falls within the EVW
18 lawyers?
19   A   Yes. There were four or five
20 EVW lawyers. I have e-mails from --
21 threads.
22   Q   Was Paul Leiberman one of
23 them?
24   A   Sounds familiar, yes.
25   Q   Have you ever spoken with

93

FARIA

1
2   David Boies regarding this lawsuit?
3   A   David Boies does not sound
4   like a familiar name.
5   Q   Anyone at the Boies law firm?
6   A   That does not sound familiar.
7   Q   Have you been retained as an
8   expert in this lawsuit?
9   A   No. No contract or any
10 information has been offered or
11 provided. They have, I guess, some
12 sort of deposition, just like what
13 we're doing today, asking information
14 and timeline and processes done.
15   Q   Is XA paying for your time
16 today?
17   A   No. I have a check for $55
18 that came with the subpoena, but it's
19 still not cashed. I don't know where
20 that check came from. I am not being
21 paid for my time.
22   Q   The check was the witness
23 fee, correct?
24   A   I don't know. I never did a
25 subpoena before. So I don't know how

24 (Pages 90 to 93)

94

FARIA

1 you want me to answer. I -- this is my
2 first time. There's a check. I'm not
3 going to cash a check unless I know
4 exactly who it's from and what the
5 purpose is of it because then it may
6 legally bind me in agreement to
7 something I may not necessarily agree.
8 So the check is right here, I could
9 show you if you'd like.
10   Q   Why don't you.
11   A   This document is as I
12 received it. Left in my office by the
13 server that he could not locate.
14   Q   **This is a check under Federal**
15 **Law that you are entitled to these fees**
16 **as -- for travel and for witness fees**
17 **at a deposition.**
18   A   It barely covers travel.
19   Q   **This is what the statutes**
20 **allow for. I just want to make sure**
21 **that you understand that it is -- no**
22 **way connotes any agreement to testify**
23 **in any certain way or on behalf of any**
24 **party.**

95

FARIA

1
2   A   Okay. Thank you.
3   Q   **Starting from the time that**
4 **Mr. Laken contacted you, asked you to**
5 **conduct an investigation on behalf of**
6 **XA, what did you do as part of that**
7 **investigation?**
8   A   So initially we started with
9 the Windstream e-mail recovery. Then
10 as-needed and when they had questions
11 they would contact me. So at one
12 point -- I don't recall exactly the
13 timeline, I would have to go back to
14 e-mails, but -- and it may be off. So
15 at one point the New York Hudson Street
16 office gets closed. And if my memory
17 serves me correctly Alexis moved
18 anything that they desired to keep to a
19 storage unit somewhere in Newark. Then
20 I get a call from Barbara that they
21 have to vacate the Chicago office for
22 whatever terms, that the landlord
23 spaces, monies, they couldn't --
24 whatever the reason, they have to
25 vacate the Chicago office. So along

96

FARIA

1
2 with Barbara and her assistant remotely
3 and over the phone and with eventually
4 remote access to the remaining servers
5 in the Chicago office, under my
6 instruction I -- they said, do we need
7 to keep all the computers? No, we only
8 need the hard drives. And in order to
9 save money to only have the data and
10 not have to move the complete physical
11 servers out of the Chicago office, I
12 instructed them to buy a couple of USB
13 drives. We plugged them into the
14 servers that were functioning in
15 Chicago and proceeded to copy any data
16 off of those servers into said USB
17 drives. Then --
18   Q   **One second.**
19   **Did you do that personally?**
20   A   I did that myself.
21   Q   **You went to Chicago?**
22   A   I remotely accessed Chicago
23 through the internet and Barbara's
24 laptop.
25   Q   **And they physically plugged**

97

FARIA

1
2 **the USB drive into the server?**
3   A   They physically plugged the
4 USB drivers or -- I don't recall --
5 there must have been internet. I don't
6 recall exactly the intermediate steps
7 of the process. I recall that I
8 remoted into servers and I copied files
9 from the servers into USB drives.
10   Q   **Okay.**
11   **Sorry. Go ahead.**
12   A   Then there were a series of
13 hard drives that were -- or a server
14 that would not turn on for whatever
15 reason, hardware failure. So I
16 instructed them to remove those hard
17 drives and label those hard drives
18 appropriately because I, in my
19 possession, had a server of the exact
20 same hardware configuration, and that I
21 would be able to insert those hard
22 drives into said server and bring that
23 server up in order to gain access to
24 whatever data was inside of it.
25   So they proceeded to -- I

25 (Pages 94 to 97)

98

1   FARIA
2   guess -- it must have happened in this
3   fashion that Barbara sent a package to
4   Alexis, and then Alexis sent a package
5   to my office. I ended up receiving in
6   my office the server that I had set-up
7   new in the first visit to XA New York,
8   and a variety of hard drives from
9   computers from Chicago and New York.
10   Q   Was the package opened by
11   Alexis?
12   A   Well, I don't know what
13   Alexis did or didn't. I'm stating that
14   I received in one package in my office
15   both Chicago and New Jersey. I mean,
16   Chicago and New York hardware in my
17   office. I don't know what happened
18   from the time it left Chicago to the
19   time that it arrived in my office.
20   Q   Is it still in your office
21   today?
22   A   No, sir, it is not.
23   Q   Where is it now?
24   A   Currently right now I believe
25   it's in a -- I believe you have an

99

1   FARIA
2   e-mail in there about a company. Oh,
3   it's in the Midwest.
4   Q   United Lex?
5   A   Sounds like that. United Lex
6   sounds like the company that the
7   hardware is all currently at, as far as
8   I know.
9   Q   When was it provided to a
10   company that sounds like United Lex?
11   A   I would have to look at my
12   e-mails and see when I provided
13   Mr. Laken with the tracking number for
14   the package that went to United Lex.
15   Q   You sent it to the Midwest
16   company?
17   A   I did.
18   Q   Do you know -- what was the
19   purpose of sending it?
20   A   Discovery and recovery of
21   information off of the devices.
22   Q   What was the recovery
23   portion?
24   A   The recovery portion comes
25   from the fact that unless a hard drive

100

1   FARIA
2   is overwritten with data, when you
3   delete files off of a hard drive you're
4   literally just deleting the index
5   thereof. So a deep scan of the hard
6   drive therefore has a high likelihood
7   of the ability of data to be recovered.
8   Q   Did you perform a deep scan?
9   A   I performed a scan. Then for
10   the litigation and custody process the
11   company was contracted to do one in a
12   manner which is deemed appropriate for
13   the litigation and the cases.
14   Q   Is the scan that you did not
15   deemed appropriate for litigation?
16   A   Well, I had -- I never wrote
17   any files to the hard drives. I just
18   plugged them in and I ran applications
19   that I have to run the deep scan.
20   There was -- however, the process
21   wasn't entirely up to the best
22   practices so they deemed it necessary
23   to send it out to a company that has
24   more experience in recovery, cataloging
25   and indexing of electronic data in

101

1   FARIA
2   order to assist the Lakens with the
3   litigious process.
4   Q   Do you know whether or not
5   the scan that you performed impacted
6   any of the data on the hard drive?
7   A   From experience and what I
8   know, the scan that I performed did not
9   impact any data on the hard drive.
10   Q   Take a break.
11   (Whereupon, a brief recess
12   was taken.)
13   Q   Did you review -- as part of
14   your investigation, did you review
15   individual XA employees' e-mails?
16   A   No. I provided access and --
17   provided access as requested.
18   Q   What was requested?
19   A   Well, for the Ron
20   Burkhardt -- for the Ron Burkhardt
21   discovery, in order to save the Lakens
22   money with the lawyers I created a
23   sandbox exchange server and uploaded to
24   the server the PST files that I had
25   access to from the Windstream back-up

26 (Pages 98 to 101)

102

```
 1          FARIA
 2   that I made upon gaining access.  So
 3   for the Ron Burkhardt discovery, to
 4   make my life easier and to assist the
 5   Lakens in their -- in maintaining their
 6   costs low, I searched for terms
 7   provided by Robert Rickner and his team
 8   against the exchange server that I
 9   setup to only provide them with valid
10   or -- you know, it was a ridiculous
11   amount of e-mails in terms of size and
12   numbers, so to provide them with a
13   smaller data source in relation to the
14   terms requested.
15          I'm sorry.  I did not go
16   through each mailbox and review
17   e-mails.  I imported the e-mails -- the
18   PSTs into the exchange server, waited
19   for the exchange server to index, and
20   upon it being ready for index I ran the
21   searches based on terms provided by
22   Robert Rickner and team.  And then
23   provided to them to results of the
24   searches.  I did not review or
25   investigate any of the employees'
```

103

```
 1          FARIA
 2   e-mails.
 3      Q   So you didn't search for
 4   e-mails that would suggest that a
 5   certain employee was taking an XA
 6   business opportunity?
 7      A   I did not search e-mails.  I
 8   provided access to Alexis, and John
 9   Winkler and Barbara Laken to anything
10   that they requested in terms of e-mails
11   and things of that nature.  I did not
12   search -- and the only search that I
13   did was within the confounds of what I
14   uploaded to the exchange server that I
15   created based on the terms requested
16   during the Ron Burkhardt litigation.
17      Q   You didn't review the content
18   of the e-mail?
19      A   I did not review the contents
20   of the e-mails.
21      Q   Thank you.
22          Did you perform a mirror
23   image of any servers when you were
24   doing your investigation?
25      A   No, I did not.
```

104

```
 1          FARIA
 2      Q   And that's customary to
 3   perform a mirror imagine so that you
 4   don't lose any data?
 5          MR. LEHRMAN:  Form.
 6      A   I had not had any experience
 7   with recovery and the need requirements
 8   of chain custody of -- during the
 9   litigious process.
10          I copied active files from
11   the Chicago servers to a USB drive.  I
12   did not make any mirror images of any
13   data.  I believe that's why everything
14   was sent to United Lex in Kansas City,
15   I think they are, to provide the
16   proper -- the discovery and the
17   recovery under their expertise and
18   ability to comply with the case.
19      Q   Did you review any text
20   messages?
21      A   Review text messages?  More
22   detail.
23      Q   Did you gain access to any
24   text messages that were stored on the
25   XA servers or XA company property and
```

105

```
 1          FARIA
 2   deliver that as part of your
 3   investigation?
 4      A   I don't recall dealing with
 5   anything ever related to text messages.
 6      Q   Did you find any -- did you
 7   do any review of documents or data
 8   regarding credit card bills?
 9      A   No.  I don't recall.  I
10   gave -- like I said, I gave access to
11   the -- so when the servers came -- when
12   the box came with the New York and the
13   Chicago information, I turned on the
14   New York server.  The hard drives that
15   were brought from Chicago for the
16   server that didn't turn on I inserted
17   into a physical server that I had in
18   good hardware condition.  And that's --
19   we were able to boot up from the hard
20   drives from Chicago and gain access to
21   that box.  At that point I installed
22   Team Viewer on both of those servers
23   and provided Barbara Laken access to
24   the servers.  And to those servers I
25   plugged in the USB drives from Chicago,
```

27 (Pages 102 to 105)

142

1   FARIA
2   A   Yes. I exported and
3   downloaded a PST file.
4   Q   And the PST file is the
5   collection of offline e-mail files that
6   you described earlier?
7   A   It's the whole mailbox in
8   offline form.
9   Q   So the whole mailbox includes
10 the e-mails in the mailbox and any
11 attachments to the e-mails?
12   A   E-mails, attachments,
13 contacts, calendar, notes, anything
14 that's -- exists within the mailbox.
15   Q   Other than what you've just
16 described -- and you backed up all of
17 that, correct?
18   A   Yes. I exported them out of
19 Windstream and then proceeded to delete
20 them from Windstream.
21   Q   And what you just described
22 in terms of what you did in that
23 instance to back-up the user file,
24 which includes the mailbox in the form
25 of a PST file and then to delete the

143

1   FARIA
2   user file, does that accurately reflect
3   what you customarily do in deleting
4   user files?
5   A   Yes.
6   Q   Okay.
7   And, again, just to confirm,
8   in your personal practice, in your IT
9   experience, is it your practice to back
10 up user files in the way you've
11 described before deleting them?
12   A   Yes.
13   Q   Again, go back to your
14 earlier testimony, what you described
15 as, I think it's your second visit to
16 XA's offices in New York, right?
17   A   Yes.
18   Q   And that's the time where
19 your testimony was that Jean Wilson
20 instructed you to delete the user
21 accounts, correct?
22   A   The user profiles from the
23 desktops.
24   Q   And you understood that
25 instruction to require you to delete

144

1   FARIA
2   the user profile, including the mailbox
3   and the PST files; is that correct?
4   A   So the computer keeps a local
5   copy of the PST file. So you set-up a
6   Outlook, you connect it to the server,
7   it keeps a local file called OST. And
8   that OST file is the local copy for
9   Outlook which is a similar copy to that
10 on the server. When you delete the
11 local profile you're only deleting all
12 the local content on that machine. The
13 online server is a separate entity.
14 And so the second visit to XA I deleted
15 all the local profiles from the
16 desktops. That transaction on
17 Exhibit 16 is me cleaning up the
18 Windstream online exchange server of
19 user of -- user mailboxes that were no
20 longer needed in order to keep the
21 costs down, the monthly overhead
22 expense cost down.
23   Q   And before you -- during your
24 second visit to XA's New York offices
25 after Jean Wilson instructed you to

145

1   FARIA
2   delete the user profiles, you did
3   delete the user profiles from the local
4   copy as you explained, right?
5   A   Yes.
6   Q   You indicated earlier that
7   you did not first make a backup of
8   those user profiles, correct?
9   A   Right. I was -- I did not
10 make a backup. I was not instructed to
11 make a backup.
12   Q   I think you indicated there
13 was some conversation that you had with
14 Jean Wilson after she first instructed
15 you and before you actually deleted the
16 user profile, correct?
17   A   Yes. I have a habit that
18 before I delete I kind of do -- either
19 search for a number of files or search
20 of size and then look to see what is.
21 So if a profile is only ten megabytes,
22 there's really a very low likelihood of
23 having anything important. When the
24 profile is two gigs there's a much
25 higher likelihood of having documents

146

FARIA

1   or information on there that is needed
2   to be preserved. Whenever it went on
3   my personal side, that raised the red
4   flag. And on those occasions I would
5   ask Ms. Jean Wilson, is there anything
6   here that you would like to keep. I
7   found these files, they're larger than
8   the normal stuff. It looks to be like
9   the user used this desktop to actually
10 produce work, not to just browse the
11 internet. And she instructed me to
12 proceed with the deletion of the files.
13 **Q   I just want to breakdown this**
14 **process and the series of**
15 **communications in a more kind of**
16 **one-by-one way.**
17   A   Okay.
18   **Q   So after Ms. Wilson**
19 **instructed you to delete user profiles,**
20 **you proceeded to review each user**
21 **profile one-by-one?**
22   A   On each computer, yes.
23   **Q   On each computer.**
24   **And as you reviewed each user**

147

FARIA

1   profile on each computer, you were
2   assessing the volume of files
3   associated with that user profile; is
4   that right?
5   A   Yes.
6   **Q   And if the volume of files**
7   **associated with the user profile**
8   **exceeded a certain amount, that would**
9   **prompt you to go and confirm with**
10 **Ms. Wilson whether or not she wanted**
11 **you to backup any of those files; is**
12 **that right?**
13   MR. MATTHEWS: Objection. Go
14   ahead.
15   A   If she wanted to keep a copy
16 before deletion on the server, that's
17 correct.
18   **Q   And was there -- and was**
19 **there one time or more than one time**
20 **that you went to Ms. Wilson and --**
21 **strike that.**
22   **You had indicated that there**
23 **were, in multiple instances, where you**
24 **were reviewing individual user profiles**

148

FARIA

1   **on machines where the volume was**
2   **significant enough that prompted you to**
3   **go see Ms. Wilson, right?**
4   A   Yes.
5   **Q   And on any of those occasions**
6   **did Ms. Wilson instruct you to save a**
7   **local copy on that machine before**
8   **deleting that user profile?**
9   A   No.
10   **Q   And, again, that practice of**
11 **not backing up a user profile that had**
12 **that volume of files associated with it**
13 **was inconsistent with your personal**
14 **practice in your line of work; is that**
15 **right?**
16   A   Yes, that's correct.
17   **Q   Again, I apologize if I'm**
18 **repeating something, but in your**
19 **initial visit to XA's offices in**
20 **New York, you indicated that you set**
21 **the server, copier, SonicWall, Firewall**
22 **rules that would -- that were related**
23 **to transmission of files between the**
24 **Chicago and New York office; is that**

149

FARIA

1   **right?**
2   A   Yes.
3   **Q   At that time was there a**
4   **backup system in the New York offices?**
5   A   The new server included, as
6   stated, that there was -- a part of the
7   hardware configuration was a cartridge
8   drive, and I installed and set-up the
9   software to run local backups of the
10 New York server into said cartridge.
11 The maintenance and the removal and
12 replacement of cartridges was not a
13 part of my duty, and I don't know under
14 whose control it is.
15   **Q   That's what I want to**
16 **understand. And I appreciate you**
17 **clarifying that.**
18   **So, in other words, the**
19 **server that you set-up, that was what**
20 **you then later indicated -- identified**
21 **as a file server?**
22   A   Yes.
23   **Q   Right.**
24   **And the file server had the**

38 (Pages 146 to 149)

154

FARIA

1   understand, what is the -- what you've
2   identified now as the tenant console
3   that you've testified about?
4   A   So Windstream is a service
5   provider that provides exchanges in the
6   cloud such as an Office 365 type of
7   service. So they are basically the
8   landlord. They have the servers, they
9   own the back end, they have everything
10   set up and configured. When you
11   inquire in Windstream about hosting
12   your e-mail server, you have now become
13   a tenant so you only have access to
14   your sandbox, your mailboxes, your
15   whatever it is that you have -- are
16   under contractural obligation with
17   them. Windstream has a landlord style
18   access to all the tenants -- to all the
19   tenants' contents.
20   Q   So this Windstream console,
21   the tenant system that you've
22   described, this was something that you
23   used to access the XA user -- strike
24   that.

155

FARIA

1   When you talked about
2   accessing XA e-mail, it was done in
3   part by -- through the Windstream
4   console you've described; is that
5   right?
6   A   Yes.
7   MR. MATTHEWS: Objection.
8   Q   And when you're using the
9   Windstream console, are you accessing
10   e-mail that exists on a local computer
11   on an e-mail server in the cloud or
12   somewhere else?
13   A   E-mail server in the cloud,
14   the off location wherever Windstream
15   holds their hardware. It's an internet
16   connection to the Windstream
17   infrastructure, if you will, and only
18   having access to your tenant. And any
19   action would produce a log of similar
20   fashion as Exhibit 2.
21   Q   So all the instances in which
22   you personally -- there were instances
23   where you logged in through the
24   Windstream console, correct?

156

FARIA

1   A   Yes.
2   Q   And there would be a log
3   that's -- that could be accessed to
4   identify those occasions where you
5   logged in; is that right?
6   A   Yes.
7   Q   And there would likewise be a
8   log identifying occasions where anyone
9   logged in; is that right?
10   A   That's correct.
11   Q   Another kind of category of
12   work that you did in connection with
13   this was you indicated that you had
14   remotely gotten access to an XA server
15   that was in Chicago, correct?
16   A   Yes.
17   Q   And that Barbara Laken had
18   plugged in USB drives into servers and
19   other computers in Chicago, correct?
20   A   Just servers.
21   MR. MATTHEWS: Objection.
22   Q   Just servers?
23   A   Just servers. The computers,
24   I instructed them to remove the hard

157

FARIA

1   drives.
2   Q   Okay.
3   A   And chuck the hardware and
4   keep the hard drives for recovery.
5   Q   So that's what I want to ask
6   you about.
7   So you had assisted with the
8   remote copying of data from one XA
9   server in Chicago; is that right?
10   A   I believe it was two or three
11   servers, I don't remember exactly.
12   Q   So you had remotely assisted
13   with the copying of data from two or
14   three servers of XA's in Chicago; is
15   that right?
16   A   To the USB drives, that's
17   correct.
18   Q   To the USB drives.
19   And then those USB drives
20   that you had assisted in copying server
21   data onto, were those USB drives
22   included with what you sent to
23   UnitedLex?
24   A   Yes. The copies were done

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 1              FARIA
 2      more in response to counsel's
 3      questions about being asked if you
 4      know if Alexis Laken or Barbara
 5      Laken had accessed or searched
 6      various e-mail.
 7   EXAMINATION BY MR. LEHRMAN:
 8      Q   Let's go one-by-one.
 9          Did Barbara Laken ever tell
10   you that she had, you know, reviewed
11   files on the USB drives?
12      A   Only after they arrived to me
13   and I set them up and gave them remote
14   access and they indexed on the Windows
15   server, to my knowledge.
16      Q   Did Barbara Laken ever tell
17   you that when the USB drive was in her
18   possession that she was viewing files
19   on the USB drive?
20      A   No.  My understanding was
21   that she packaged it and sent it ASAP.
22      Q   Likewise, did Alexis Laken
23   ever tell you or communicate to you
24   that she had viewed files directly from
25   the USB drives?
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175

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 1              FARIA
 2      A   No, sir.
 3      Q   Did Barbara Laken ever
 4   express to you that she had viewed any
 5   files in any of the hard drives that
 6   had been packaged up?
 7      A   No, sir.
 8      Q   Likewise, had Alexis Laken
 9   ever communicated to you that she had
10   reviewed files on any of the hard
11   drives directly from the hard drivers?
12      A   No, sir.
13      Q   Thank you, sir.
14      A   Thank you.
15          (Time noted: 2:10 p.m.)
16
17
18
19
20
21
22
23
24
25
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176

```
 1
 2   STATE OF _____ )
 3                         ) :ss
 4   COUNTY OF _____ )
 5
 6
 7          I, PEDRO FARIA, the witness
 8   herein, having read the foregoing
 9   testimony of the pages of this deposition,
10   do hereby certify it to be a true and
11   correct transcript, subject to the
12   corrections, if any, shown on the attached
13   page.
14
15
16              PEDRO FARIA
17
18
19
20   Sworn and subscribed to before
21   me, this        day of
22   , 2018.
23
24   _____
25          Notary Public
```

177

```
 1
 2          C E R T I F I C A T I O N
 3
     STATE OF NEW YORK  )
 4                     ) ss.:
     COUNTY OF NEW YORK )
 5
 6          I, JUDITH CASTORE, Shorthand Reporter
 7   and Notary Public within and for the State
 8   of New York, do hereby certify:
 9          That PEDRO FARIA, the witness whose
10   deposition is hereinbefore set forth, was
11   duly sworn by me and that this transcript
12   of such examination is a true record of
13   the testimony given by such witness.
14          I further certify that I am not
15   related to any of the parties to this
16   action by blood or marriage and that I am
17   in no way interested in the outcome of
18   this matter.
19          IN WITNESS WHEREOF, I have hereunto
20   set my hand this 13th day of March, 2018.
21
22
                ------------
23              JUDITH CASTORE
24
25
```

45 (Pages 174 to 177)